

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of decision: 20th November 1995

CRIMINAL APPEAL NO.422 OF 1987

THE HONOURABLE MR. JUSTICE A.N.DIVECHA

AND

THE HONOURABLE MR. JUSTICE H.R.SHELAT

Shri Sunil C.Patel, Advocate, for the Appellant.

Shri S.T.Mehta, Additional Public Prosecutor, for the
Respondent.

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1. Whether Reporters of Local Papers may Yes
be allowed to see the judgment?
2. To be referred to the reporter or No
not?
3. Whether their Lordships wish to see No
the fair copy of judgment?
4. Whether this case involved a No
substantial question of law as to the
interpretation of the Constitution of
India, 1950 or any order made
thereunder?
5. Whether it is to be circulated to the No
Civil Judge?

oram: A.N.Divecha & H.R.Shelat, JJ.
(20th November 1995)

Oral Judgment: (Per H.R.Shelat, J.)

The then learned Additional sessions Judge at Surat, in Sessions Case No.154 of 1980 on 20th May 1987, convicted the appellant of the offence punishable under section 302 of the Indian Penal Code, 1860 (the IPC for brief) and sentenced him to life imprisonment, and hence the appellant who is convicted has preferred this appeal.

2. In short it is the case of the prosecution that on 12th September 1986 in the morning, one Musafir Yadav serving as a Watchman was on duty at the gate of the Sanjivani Hospital situated on the National Highway No.8 near the Railway Crossing at Chalthan. One Panchu Pradhan Dudhiya was also beside him. At 10.45 hours, one Saileshkumar was found coming. He was injured on his chest. Musafir Yadav questioned him. Saileshkumar replied that Pande Maharaj Lariwala gave sickle blows to him and it caused him injury. Thereafter, he immediately fell down. He was taken to the hospital. A Doctor was then called, and the doctor declared him dead. A complaint was then filed before the Palsana Police Station. The Police Officer after completing the investigation filed the charge-sheet before the Court of the learned Judicial Magistrate, First Class at Bardoli. As he was not competent to hear and decide the case, he committed the case to the Court of Sessions at Surat for hearing and disposal in accordance with law. The case came to be registered as Sessions Case No.154 of 1986. The then learned Sessions Judge at Surat assigned the matter to the learned Additional Sessions Judge at Surat for hearing and disposal in accordance with law. The charge was framed against the appellant at Exh.2. When it was read over and explained to him, the appellant did not plead guilty. The prosecution then adduced the necessary evidence. At the conclusion of the trial, appreciating the evidence before him, the learned Additional Sessions Judge at Surat convicted the appellant as aforesaid and therefore preferring this appeal the judgment and order of conviction and sentence have been assailed.

3. The whole case depends on the statement made by the deceased while he was breathing his last. Before Musafir Yadav and Panchu Pradhan, the statement is said to have been made, and therefore Shri Patel, the learned Advocate representing the appellant, assailed the evidence submitting that it was not appealing and was not acceptable. We see no force in the submission made by Shri Patel, the learned Advocate representing the appellant. Of course, Panchu Prasad has not supported the fact about the statement having been made by the

deceased. According to him, the deceased stated nothing and fell down on the ground. It seems, with a view to save the appellant from legal consequences, he put the prosecution in fix, but he has no doubt admitted the presence of Musafir Yadav who has supported the prosecution. Musafir Yadav in clear terms stated before the lower court that, when he was on duty near the gate of Sanjivani Hospital, the deceased was coming in wounded condition. He was injured on his chest and was bleeding. On being questioned the deceased replied that the appellant had beaten him with a sickle, and then he fell down. His such statement is not shaken in his cross-examination. Simply to put a denying- question will not in our view be sufficient to hold that the statement made is shaken or has lost its vigour. On that point there is no effective cross-examination and we see no reason to discard the same and hold in favour of the appellant. No suggestion has been made that Musafir Yadav was having inimical terms with the appellant. There is also no suggestion made during the cross-examination that the deceased at that time was not in a position to make the statement, or that Musafir Yadav had no scope to go to the deceased and question about the injury he noted. When that is the case, the statement which is not shaken and there is no reason to disbelieve the same, or doubt the same, in our view, the learned Judge was perfectly right in placing reliance and reaching to the conclusion against the appellant. To put it in different words, in our view, the learned Judge was perfectly right in holding that the prosecution has successfully without any doubt brought the guilt home to the accused.

4. Having faced with such situation, Shri Patel then submitted that, when the appellant appeared before the Police, his clothes were not seized, and further the sickle he brought was, according to the chemical analyser's report, having no blood stains on it, which would discredit the truth of the case of the prosecution. We are unable to agree with this submission. It may be remembered that the incident happened at 10.45 a.m., and the accused voluntarily went to the Police Station and surrendered himself as per the panchnama at 14.45 p.m., about four hours after the incident. No one ordinarily would go to the Police Station and surrender with a proof against him. He would be careful in seeing that the police has no chance or opportunity to have any proof from him, and therefore it is quite possible that after changing his clothes the appellant went to the police station and might have produced the sickle after washing it out. Naturally, therefore, the signs which ordinarily

would be found could not be noted in this case. Hence, absence of any blood marks on the sickle or the clothes of the appellant would not help the defence. Under the circumstances, we are not inclined to accept the submission made on behalf of the appellant. On no other point,. submissions were advanced. We find that the learned Judge has committed no error either of law or of fact. He is perfectly right in convicting and sentencing the accused under section 302 of the IPC. The judgment and order passed by the learned Judge below are required to be maintained.

5. In the result, this appeal, being devoid of merits, is hereby dismissed.

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